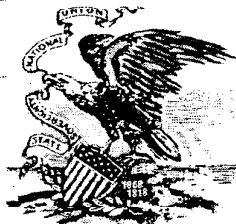


STATE OF ILLINOIS

DEPARTMENT OF INSURANCE



IN THE MATTER OF THE DENIAL
OF THE REQUEST FOR AN ILLINOIS
INSURANCE PRODUCER'S LICENSE OF:

HEARING NO. 4093

DENNIS L. HARTWIG
14423 SHERMAN STREET
POSEN, ILLINOIS 60469

ORDER

I, Deirdre K. Manna, Acting Director of Insurance for the State of Illinois, hereby certify that I have read the entire Record in this matter and the hereto attached Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer, Timothy M. Cena, heretofore appointed and designated pursuant to Section 402 of the Illinois Insurance Code (215 ILCS 5/402) to conduct a Hearing in the above-captioned matter. I have carefully considered and reviewed the entire Record of the Hearing and the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer attached hereto and made a part hereof.

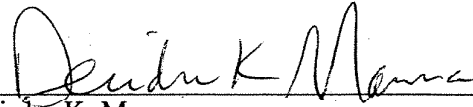
I, Deirdre K. Manna, Acting Director of Insurance, being duly advised in the premises, do hereby adopt the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer as my own, and based upon said Findings, Conclusions and Recommendations enter the following Order under the authority granted to me by Article XXIV of the Illinois Insurance Code (215 ILCS 5/401 et seq.) and Article X of the Illinois Administrative Procedure Act (5 ILCS 100/10-5 et seq.).

This Order is a Final Administrative Decision pursuant to the Illinois Administrative Procedure Act (5 ILCS 100/1-1 et seq.). Further, this Order is appealable pursuant to the Illinois Administrative Review law (735 ILCS 5/3-101 et seq.).

NOW IT IS THEREFORE ORDERED THAT:

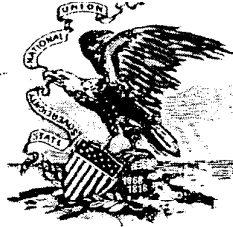
- 1) The Application of the Respondent, Dennis L. Hartwig, for an Illinois Insurance Producer's License is denied; and
- 2) The Respondent, Dennis L. Hartwig, shall within 35 days of the date of this Order come into compliance with the Judgment Order entered against him in Bytnar v. Hartwig, Case #97MG-3665, in the Circuit Court of Cook County, Illinois, Municipal Department, Sixth District; and
- 3) The Respondent, Dennis L. Hartwig, shall pay as costs of this proceeding, within 35 days of the date of this Order, the sum of \$488.00, directly to the Illinois Department of Insurance, 320 West Washington Street, Springfield, Illinois 62767.

IN WITNESS WHEREOF, I have hereunto
subscribed my name and affixed the Official
Seal of the Department of Insurance, in the
City of Springfield, State of Illinois, this 5th
Day of April, A.D., 2004.


Deirdre K. Manna
Acting Director

STATE OF ILLINOIS

DEPARTMENT OF INSURANCE



IN THE MATTER OF THE DENIAL
OF THE REQUEST FOR AN ILLINOIS
INSURANCE PRODUCER'S LICENSE OF:

DENNIS L. HARTWIG
14423 SHERMAN STREET
POSEN, ILLINOIS 60469

HEARING NO. 4093

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF THE HEARING OFFICER

Now comes Timothy M. Cena, Hearing Officer in the above-captioned matter and hereby offers his Findings of Fact, Conclusions of Law and Recommendations to the Director of Insurance.

FINDINGS OF FACT

- 1) On June 20, 2003, the Illinois Director of Insurance, J. Anthony Clark, (Director) issued a Letter of Denial denying the application of Dennis L. Hartwig (Respondent) to be licensed as an Illinois Insurance Producer (Hearing Officer Exhibit #2A).
- 2) On July 18, 2003, the Illinois Department of Insurance (Department) received a Request for Hearing on the denial from the Respondent (Hearing Officer Exhibit #2-B).
- 3) On September 11, 2003, the Director issued a Notice of Hearing pursuant to the Respondent's request, setting a Hearing date and location of October 15, 2003 at the Department's Offices in Chicago, Illinois (Hearing Officer Exhibit #2).
- 4) The Respondent received the Notice of Hearing at his address of record with the Department on September 16, 2003 (see the Domestic Return Receipt Card attached to Hearing Officer Exhibit #2).

- 5) Glen Gasiorek filed a Notice of Appearance in this matter as attorney for the Department (Hearing Officer Exhibit #2).
- 6) Timothy M. Cena was appointed as Hearing Officer in this matter by Order of the Director of Insurance on September 11, 2003 (Hearing Officer Exhibit # 1).
- 7) On October 15, 2003 the Hearing Officer received an Oral Motion for Continuance of this matter from the Respondent. The Hearing Officer granted the Respondent's Motion and continued this proceeding until October 16, 2003.
- 8) The Hearing in this matter was convened on October 16, 2003 at the Department's Offices in Chicago, Illinois at which time were present Timothy M. Cena, Hearing Officer; Glen Gasiorek, on behalf of the Department; Dennis Hartwig, the Respondent (Pro Se); and Rich Nitka and Ron Masino, both employees of the Department.
- 9) The purpose of this proceeding is to allow the parties to appear and present evidence regarding the allegations contained in the Director's June 20, 2003 Letter of Denial and to determine whether said denial should stand.
- 10) The Department presented, and the Hearing Officer accepted into the record as Department Exhibit #1, a Bill of Indictment in Case #97CR19804, the People of the State of Illinois v. Dennis Hartwig, in the Circuit Court of Cook County, Illinois. The indictment indicates that in July of 1997 the Respondent was indicted on one count of felony Theft and one count of felony Criminal Breach of Fiduciary Duty. On April 27, 1999 the Respondent pled guilty to Attempted Theft and was sentenced to one-year misdemeanor probation.
- 11) The Hearing Officer also accepted into the record, as Department Exhibit #2, a Judgment Order and Verified Complaint at Law in Case #97M6-3665, Bytnar v. Hartwig, in the Circuit Court of Cook County, Illinois, Municipal Department, Sixth District. In the complaint plaintiff Bytnar alleged that Respondent Hartwig had borrowed \$15,000.00 in cash from him and refused to repay \$6,000.00 of the total amount. The Court, on March 26, 1998, entered the above-referenced judgment order in favor of the plaintiff and ordered the Respondent to pay \$8,500.00 to Bytnar.
- 12) The Hearing Officer also accepted into the record in this matter, as Department Exhibit #3, the Affidavit of Daniel C. Truesdale. Said Affidavit indicates that the affiant was the attorney that represented the Bytnars' in their lawsuit against the Respondent. The affiant further stated that, as of September 22, 2003, Hartwig had not made payment to the Bytnars in satisfaction of the judgment order in that case.
- 13) Ronald Masino, an investigator for the Department of Insurance, testified on behalf of the Department as follows:

- a) He has been an investigator for the Department for 11 years and is familiar with the Department's file regarding the Respondent;
 - b) The Department actually had two open files on the Respondent. The first, opened in 1999, involved a complaint filed against the Respondent by the Bytnars. The Bytnars had made two \$7,500.00 loans to the Respondent in 1993. The Respondent in 1995 paid back \$5,000 of the loans, but a second payment check for \$1,000.00 was returned as NSF by the bank (see Department Exhibit #2). The Bytnars then sought legal assistance, and ultimately, in 1998, obtained a judgment in the amount of \$8,500.00 against the Respondent;
 - c) The Respondent was a licensed insurance agent at the time he received the loan from the Bytnars;
 - d) During the Respondent's license renewal process in December of 2001, a second file was opened on the Respondent because of the unresolved situation with the Bytnars. The Respondent indicated to the witness that he felt that he did not owe the outstanding money to the Bytnars and had no intention of repaying it. The Respondent decided not to renew his license at that point.
- 14) Dennis L. Hartwig, the Respondent, testified in this matter on his own behalf, in a narrative manner, as follows:
- a) When he first spoke to Investigator Masino, he made him aware of the criminal indictment (see Department Exhibit #1) but would not give Masino any further information, referring him to his attorney instead;
 - b) While he was licensed as an insurance agent he sold a number of policies to Patrick Murphy. Because Murphy did not pay the premiums timely the policies lapsed. Murphy approached him and paid him \$1,300.00 for new insurance and he bound coverage for Murphy for an auto policy, as well as, other insurance. All of the policies were issued by insurers except for the auto policy. Murphy's daughter had an automobile accident and attempted to file a claim, but no policy had been issued. Murphy brought the matter to the attention of an "investigator" that worked "for the State of Illinois". The Cook County State's Attorney's Office then indicted him for felony theft and felony criminal breach of fiduciary duty based on the missing premium monies. On the advice of his criminal attorney he pled guilty, as part of a plea agreement, to attempted theft, a Class A misdemeanor;
 - c) He does not feel that he did anything wrong in handling Murphy's insurance transaction. He handled it in the same manner that he had many other transactions, but the problem occurred at the insurance company as the policy was not issued properly. He plead guilty to the misdemeanor so that he would not have a felony conviction on his record;

- d) Edward and Irene Bytnar are his wife's aunt and uncle and he borrowed \$15,000.00 from them to complete a construction project unrelated to his insurance agency business. The Bytners wrote two checks in the amount of \$7,500.00; one to Hartwig Insurance Agency and one to Action Mechanical. He wasn't able to repay the Bytners because he, in turn, did not get paid when he finished the construction project;
- e) He believes that he has repaid the Bytnar family \$9,500.00 and that "was \$2,000.00 more" than he borrowed "under Dennis Hartwig." The court "really didn't care" that some of the money was borrowed as Action Mechanical as opposed to Dennis Hartwig Insurance. A judgment was entered against him for the full amount;
- f) He is willing to repay the Bytnar family as soon as he gets money to go after the individual for whom he did the construction work.

15) On Cross-examination the Respondent testified as follows:

- a) When he took the two \$7,500.00 loans out from the Bytnars in 1993 he indicated that he would repay the loans in two weeks;
- b) He told Investigator Masino that he wouldn't repay the judgment order because he had already repaid the Bytnars \$9,600.00 and the remainder was borrowed by Action Mechanical. He wasn't going to pay "the corporation's thing" when this "gentleman" (person for whom the Respondent had done the construction work) owed money to Action Mechanical;
- c) He doesn't understand why the Bytnars' loan is an issue regarding the issuance of his insurance license because it was not insurance related. He does not believe his failure to repay his loans reflects on his trustworthiness;
- d) He admits that he borrowed money from the Bytnars but doesn't believe that he has to repay it because the unpaid part of the loan was borrowed by Action Mechanical Corporation.

16) On May 17, 1993 the Respondent wrote a receipt to the Bytnars acknowledging the receipt of two checks in the amount of \$7,500.00 each (see Respondent Exhibit #1). In this receipt the Respondent acknowledged receipt of one check made out to Hartwig Insurance Agency and the other check made out to Action Mechanical Corporation. The Respondent further indicated that he was the President of Action Mechanical and sole owner of Hartwig Insurance.

17) Esquire Deposition Services recorded the testimony taken in this matter and charged the Department \$488.00 for the court reporter's attendance and the original transcript of the proceeding.

CONCLUSIONS OF LAW

Based upon the above-stated Findings of Fact and the entire Record in this matter the Hearing Officer offers the following Conclusions of Law.

- 1) Timothy M. Cena was duly appointed as Hearing Officer in this matter pursuant to Section 402 of the Illinois Insurance Code (215 ILCS 5/402).
- 2) The Director of Insurance has jurisdiction over the subject matter and parties to this proceeding pursuant to Sections 401, 402, 403, 500-30 and 500-70(a)(8) of the Illinois Insurance Code (215 ILCS 5/401, 5/402, 5/403, 5/500-30 and 5/500-70(a)(8)).
- 3) The purpose of this proceeding is to determine whether the Director's Letter of Denial denying the Respondent's application for an Illinois Insurance Producer's License should stand.

In its Letter of Denial and Notice of Hearing in this matter the Department alleged that the Respondent has committed acts that are grounds for denial of his application pursuant to Section 500-30 and Section 500-70(a)(8) of the Insurance Code.

Section 500-30(a)(2) of the Insurance Code provides, in pertinent part, as follows:

“(a) An individual applying for a resident insurance producer license must make application on a form specified by the Director and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the Director must find the individual: ...

(2) has not committed any act that is a ground for denial, suspension, or revocation set forth in Section 500-70:”

Section 500-70(a)(8) of the Insurance Code provides as follows:

“(a) The Director may. . . refuse to issue or renew an insurance producer license. . . for any one or more of the following causes: . . .

(8) using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere;”

Specifically the Department alleges that the Respondent, when he was previously licensed as an insurance producer, took out a loan from one of his insurance clients and failed to repay said loan despite being ordered by a court to do so. The Department

further alleged that the Respondent was convicted of a misdemeanor charge of Attempted Theft. The Department further alleges that by such acts the Respondent has demonstrated incompetence, untrustworthiness and financial irresponsibility, which are grounds for denial of an application for a producer's license pursuant to Section 500-70(a)(8) of the Code.

The evidence presented in this matter indicates that on April 27, 1999 the Respondent, pursuant to a plea agreement, plead guilty to a Class A misdemeanor, Attempted Theft. The Respondent's plea was based upon two felony indictments involving his mishandling of the insurance premium moneys of one of his clients and the resultant failure of the client's insurance policy to be issued.

The evidence also showed that the Respondent has had a judgment order entered against him in a civil case in Illinois. The judgment order involved a loan that the Respondent received in the amount of \$15,000.00 from his aunt and uncle in law, Edward and Irene Bytnar. The Bytnars were also insurance clients of the Respondent. This loan was originally taken out in 1993, and was in the form of two \$7,500.00 checks, one made out to Hartwig Insurance and one made out to Action Mechanical. The Respondent was the "President and sole owner" of each organization. The Respondent at some point repaid a portion of the loan to the Bytnars. The Bytnars, or their estate, however, filed suit to recover the remainder of the loan, securing a judgment against the Respondent in the amount of the unpaid portion of the loan plus attorney fees (\$8,500.00). The judgment remains unpaid as of the date of the Hearing in this matter.

The Respondent, testifying in a narrative manner, stated that he did not do anything wrong or out of the ordinary involving the insurance related conviction for attempted theft. He stated that he collected \$1,300.00 in premiums from the insured for "quite a lot of insurance." He went ahead in the "normal situation" and bound the coverage. All of the policies "came in" except the auto. The insured had an accident, filed a claim and found out he had no coverage. As far as he (Respondent) is concerned the insurer received the money from his office and "lost it". The insured then went to "people with the state" and alleged criminal activity. An indictment was issued. On advice of his attorney he agreed to plead guilty to a misdemeanor.

Regarding the Bytnar loan, the Respondent stated that he felt bad about not repaying the Bytnars but that he, in turn, had not been paid for the construction project to which the loan had been applied. He stated that he had repaid the portion of the loan made out to Hartwig Insurance but that he didn't feel that he owed the rest of the money because the second check was made out to Action Mechanical. The Respondent stated that he would pay the judgment when he got paid by the individual for whom he did the construction work.

Based upon the evidence entered into the Record in this matter, the Hearing Officer concludes that the Director of Insurance correctly and properly determined that the Respondent should not be issued an Illinois Insurance producer's license. The Respondent's insurance business under his prior license culminated in the Respondent being charged with two insurance related felony counts and ultimately a misdemeanor conviction for mishandling premium funds. The Respondent's explanation that he did everything with this insured as he normally would have, but the insurer lost the money, does not satisfy the Hearing Officer that Respondent should

be considered as trustworthy and competent. The insurance client relies on their agent to make sure that the premium paid to the agent is handled properly and that the expected policy is issued as promised.

Further, the way the Respondent has handled himself regarding the Bytnar loan does not speak well of the Respondent's trustworthiness and competency. Failure to repay an eleven-year-old loan taken from ones clients and relatives is disturbing. If the Respondent will treat his insurance clients/relatives in such a manner, the Hearing Officer can only wonder how the Respondent will conduct himself with the general insurance buying public. Most troubling of all, however, is that not only is the Respondent in violation of a court order, but also that the Respondent maintains that he does not owe the money in question. The Respondent had his day in court on the Bytnar loan issue and was ordered to pay. He simply refuses to comply with the court order. The Respondent's attitude and his statements regarding the court's order are, in the Hearing Officer's opinion, a clear indication of the Respondent's untrustworthiness, incompetency and financial irresponsibility. The Hearing Officer concludes that the Director of Insurance correctly and properly determined that the Respondent has demonstrated incompetence, untrustworthiness and financial irresponsibility and that therefore the Director correctly and properly denied the Respondent's application for a producer's license pursuant to Section 500-70(a)(8) of the Insurance Code.

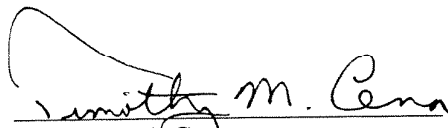
RECOMMENDATIONS

Based upon the above-stated Findings of Fact and the entire Record in this matter the Hearing Officer makes the following Recommendations to the Director of Insurance:

- 1) That the Respondent's application for an Illinois insurance producer's license be denied; and
- 2) That the Respondent be ordered to come into compliance with the Judgment Order entered against him in Bytnar v. Hartwig, Case #97M6-3665, in the Circuit Court of Cook County, Illinois; and
- 3) That the Respondent be assessed the costs of this proceeding.

Date: 3/14/04

Respectfully submitted:


Timothy M. Cerna
Hearing Officer